# UNITED STATES PATENT AND TRADEMARK OFFICE

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| 10/749,007 | 12/30/2003 | Scott F. Singer | 03-1116 | 8390 |

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| EXAMINER |
|---|
| GRAHAM, CLEMENT B |

| ART UNIT | PAPER NUMBER |
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| 3692 | |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

| | Application No. | Applicant(s) |
|---|---|---|
| **Office Action Summary** | 10/749,007 | SINGER ET AL. |
| | Examiner | Art Unit | |
| | Clement B. Graham | 3692 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on <u>05 October 2007</u>.

2a)☐ This action is **FINAL**.     2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1,3-13,15,16,18,19 and 21-24* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3-13, 15-16, 18-19, 21-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All  b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

## DETAILED ACTION

1. Claims 1, 3-13, 15-16, 18-19, 21-24, remained pending.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman,* 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi,* 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum,* 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel,* 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim, 1, 3-13, 15-16, 18-19, 21-24, rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 21-43 of copending Application No: 11, 416, 406 Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations in the pending Application will produce the same invention or result of the Application No: 11, 416, 406.

### Claim Rejections - 35 USC § 102

2.    The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:
A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3.    Claims 1, 3-13, 15-16, 18-19, 21-24, are rejected under 35 U.S.C. 102(e) as being anticipated by Kemp et al (Hereinafter Kemp U.S. Pub: 2007/0100735 A1.

As per claim 1, Kemp discloses a method for implementing an automated trading strategy relating to a tradeable object being traded in an electronic exchange,

the method comprising:

establishinq a first automated tradinq strateqy based on a first tradeable object and a

second tradeable object, the first automated tradinq strateqy qeneratinq a first order for

the second tradeable object, wherein a price of the first order is based upon a first

estimated price for the first tradeable obiect (see column 12 para p111 and column 6

para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095)

establishinq a second automated tradinq strateqy based on the first tradeable object

and a third tradeable object, the second automated tradin,q strateqy ,qeneratin,q a

second order for the third tradeable object, wherein a price of the second order is based

upon a second estimated price for the first tradeable (see column 12 para p111 and

column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10

para 0095) receivin,q market information for the first tradeable object from an electronic

exchanqe, the market information comprisin,q order quantities available to buy or sell

the first tradeable obiect at a plurality of price levels (see column 12 para p111 and

column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10

para 0095) calculating [[a]] the first estimated price based on the order quantities in the

received market information for a first order quantity of r-elatnq-te the first tradeable

object;

taking a first action of a the first automated trading strategy based on the first estimated

price, wherein the first action comprises sendinq the first order by the first automated

tradin,q strate,qy to an electronic exchanqe(see column 12 para p111 and column 6

para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095)

calculating the second estimated price based on the order quantities in the received

market information for the first tradeable object, an allocation of the first order quantity

at the first estimated price, and further based on second order quantity; and

taking a second action of the second automated trading strategy based on the second

estimated price, wherein the second action comprises sendinq the second order by the

second automated tradin,q strateqy to an electronic exchanqe. (see column 12 para

p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

As per claim 3,  Kemp discloses wherein the second order has a price that is calculated based on the second estimated price and a ratio. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

As per claim 4,  Kemp discloses further comprising the step of: detecting a fill of the first order, and in response, sending an offset order to buy or sell the first tradeable object, and detecting a fill of the second order, and in response sending an offset order to buy or sell the third tradeable object. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

As per claim 5,  Kemp discloses wherein the offset order sent in response to the fill of the first order has a price that is equal or substantially equal to the first estimated price; and wherein the offset order sent in response to the fill of the second order has a price that is equal or substantially equal to the second estimated price. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

As per claim 6,  Kemp discloses wherein the step of calculating a the second estimated price which is based on the first specific quantity is performed by reducing an available quantity of the first tradeable object based on the first quantity.

As per claim 7,  Kemp discloses further comprising the step of recalculating the first estimated price and the second estimated price when market conditions change. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

As per claim 8,  Kemp discloses further comprising the step of recalculating the first estimated price and the second estimated price when an event occurs that is different that a change in market conditions. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

As per claim 9, Kemp discloses wherein the event comprises a change in priority, wherein the event comprises canceling one of the first and second automated trading strategies, or wherein the event comprises a third automated trading strategy calculating a third estimated price. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

As per claim 10, Kemp discloses wherein the first automated trading strategy and the second trading strategy are trading strategies associated with one trader. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

As per claim 11, Kemp discloses wherein the first automated trading strategy is associated with a first trader and the second trading strategy is associated with a second trader that is different from the first trader. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

As per claim 12, Kemp discloses a computer readable medium having program code recorded thereon for causing a microprocessor to execute the method of claim 1. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

As per claim 13, Kemp discloses a computer-based method for coordinating trading tools that are used to trade tradeable objects in an electronic trading environment, the method comprising:
receivinq market information related to a tradeable object from the electronic exchanqe, the market information comprisinq order quantities available for the tradeable object at a plurality of price levels(see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095)
receiving a first request by from a first trading tool, wherein the first request represents a willingness to lean on a tradeable object in executing a first trading strategy comprisinq a first order to buy or sell a first order quantity of the tradeable object(see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078

and column 10 para 0095)

allocating a the first order quantity at a first available price level for portion ef the tradeable object associated with the first request to the first trading tool based on the received order quantities available at the plurality of price levels, wherein the allocated first order quantity at the first available price level for the tradeable object is used by the first trading tool in formulating a first estimated price for the first order(see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095)

receivinq a second request from a second tradinq tool, wherein the second request represents a willinqness to lean on the tradeable object in executin,q a second tradin,q strate,qy comprisin,q a second order to buy or sell a second order quantity of the tradeable object(see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095) and based on the allocation of the first order quantity at the first price level and the received order quantities available at the plurality of price levels, allocatinq the second order quantity at a second available price level for the tradeable object associated with the second request to the second tradinq tool, wherein the allocated second order quantity at the second available price level for the tradeable object is used by the second tradinq tool in formulatinq a second estimated price for the second order. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

As per claim 15, Kemp discloses wherein the first tradinq strate,qy is further based on a second tradeable object, the method further comprisin,q:

calculatin,q a price for an order for the second tradeable object based on the first estimated price for the first order(see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095)

sendinq the order for the second tradeable object to an electronic exchan,qe;

wherein the second tradin,q strate,qy is further based on a third tradeable object, the method further comprisinq: (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095)

calculatin,q a price for an order for the third tradeable object based on the second estimated price for the second order, and sendin,q the order for the third tradeable object to an electronic exchanqe. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

As per claim 16, Kemp discloses further comprises:
sending the an first order for the of the tradeable object when the fir-st order for the second tradeable object is filled; and

sendin,q the second order for the tradeable object when the order for the third tradeable object is filled. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

As per claim 17, Kemp discloses wherein the first trading strategy and the second trading strategy comprise sessions of a trading tool. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

As per claim 18, Kemp discloses a computer readable medium having program code recorded thereon for causing a microprocessor to execute the method of claim 13. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

21. (New) The method of claim 16, wherein the second tradeable object and the third tradeable object are the same tradeable object. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

22. (New) The method of claim 16, wherein the second tradeable object and the third tradeable object are different tradeable objects. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

23. (New) The method of claim 1, wherein the second tradeable object and the third tradeable object are the same tradeable object. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para

0095).

24. (New) The method of claim 1, wherein the second tradeable object and the third tradeable object are different tradeable objects. (see column 12 para p111 and column 6 para 0054 and column 7 para 0065-0066, 0071-0072, 0078 and column 10 para 0095).

## Conclusion
## RESPONSE TO ARGUMENTS

3. Applicant's arguments filed 10/5/2007 has been fully considered but they are moot in view of new grounds of rejections.

4.      Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clement B Graham whose telephone number is 571-272-6795. The examiner can normally be reached on 7am to 5pm.

5.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clement B Graham whose telephone number is 703-305-1874. The examiner can normally be reached on 7am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on 571-272-6702. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for regular communications and 703-305-0040 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.


CG

Dec 18, 2007

FRANTZY POINVIL
PRIMARY EXAMINER